

## ACT 241

H.B. NO. 3946

A Bill for an Act Relating to Environmental Impact Statements.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 343-3, Hawaii Revised Statutes, is amended to read as follows:

**“§343-3 Public records and notice.** All statements, environmental assessments, and other documents prepared under this chapter shall be made available for inspection by the public during established office hours.

The office shall inform the public of notices filed by agencies of the availability of environmental assessments for review and comments, of determinations that statements are required or not required, of the availability of statements for review and comments, and of the acceptance or nonacceptance of statements. The office shall inform the public by the publication of a periodic bulletin to be available to persons requesting this information. The bulletin shall be available through the office and public libraries.”

SECTION 2. Section 343-5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Whenever an agency proposes an action in subsection (a), other than feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted, or funded, or other than the use of state or county funds for the acquisition of unimproved real property, which is not a specific type of action declared exempt under section 343-6, that agency shall prepare an environmental assessment for such action at the earliest practicable time to determine whether an environmental impact statement shall be required. For environmental assessments for which a negative declaration is anticipated, a draft environmental assessment shall be made available for public review and comment for a period of thirty days. The office shall inform the public of the availability of the draft environmental assessment for public review and comments pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of such determination with the office which, in turn, shall publish the agency determination for the public’s information pursuant to section 343-3. The draft and final statements, if required, shall be prepared by the agency and submitted to the office. The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comments pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by the agency, may make a recommendation as to the acceptability of the final statement. The final authority to accept a final statement shall rest with:

- (1) The governor, or the governor’s authorized representative, whenever an action proposes the use of state lands or the use of state funds or, whenever a state agency proposes an action within the categories in subsection (a); or

- (2) The mayor, or the mayor's authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

Acceptance of a required final statement shall be a condition precedent to implementation of the proposed action. Upon acceptance or nonacceptance of the final statement, the governor or mayor, or the governor's or mayor's authorized representative, shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance pursuant to section 343-3.

(c) Whenever an applicant proposes an action specified by subsection (a) which requires approval of an agency, and which is not a specific type of action declared exempt under section 343-6, the agency receiving the request for approval shall prepare an environmental assessment of such proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required. For environmental assessments for which a negative declaration is anticipated, a draft environmental assessment shall be made available for public review and comment for a period of thirty days. The office shall inform the public of the availability of the draft environmental assessment for public review and comments pursuant to section 343-3. The applicant shall respond in writing to comments received during the review and the agency shall prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of such determination with the office which, in turn, shall publish the agency's<sup>1</sup> determination for the public's information pursuant to section 343-3. The draft and final statements, if required, shall be prepared by the applicant, who shall file these statements with the office. The draft statement shall be made available for public review and comments through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comments pursuant to section 343-3. The applicant shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by the applicant or agency, may make a recommendation as to the acceptability of the final statement. The authority to accept a final statement shall rest with the agency receiving the request for approval. Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of proposed action. Upon acceptance or nonacceptance of the final statement, the agency shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance of the final statement as<sup>2</sup> pursuant to section 343-3. The agency receiving the request, within thirty days of receipt of the final statement, shall notify the applicant and the office of the acceptance or nonacceptance of the final statement. The final statement shall be deemed to be accepted if the agency fails to accept or not accept the final statement within thirty days after receipt of the final statement; provided that the thirty-day period may be extended at the request of the applicant for a period not to exceed fifteen days.

In any acceptance or nonacceptance, the agency shall provide the applicant with the specific findings and reasons for its determination. An applicant, within sixty days after nonacceptance of a final statement by an agency, may appeal the nonacceptance to the environmental council, which, within thirty days of receipt of the appeal, shall notify the applicant of the council's determination.

In any affirmation or reversal of an appealed nonacceptance, the council shall provide the applicant and agency with specific findings and reasons for its determination. The agency shall abide by the council's decision."

SECTION 3. Section 343-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any judicial proceeding, the subject of which is the determination that a statement is [or is not] required for a proposed action, shall be initiated within sixty days after the public has been informed of such determination pursuant to section 343-3. Any judicial proceeding, the subject of which is the determination that a statement is not required for a proposed action, shall be initiated within thirty days after the public has been informed of such determination pursuant to section 343-3. The council or the applicant shall be adjudged an aggrieved party for the purposes of bringing judicial action under this subsection. Others, by court action, may be adjudged aggrieved."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 17, 1992.)

#### Notes

1. Prior to amendment "agency" appeared here.
2. Should be underscored.